

TO: Commissioner of Patents and Trademarks Washington, DC 20231	FILED REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK
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2006 DEC 13 PM 2:50
 In Compliance with 35 § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been
 filed in the U.S. District Court Central District of California on the following ☒ Patents or ☒ Trademarks:

DOCKET NO.	DATE FILED	U.S. DISTRICT COURT Central District of California
	12/13/06	
PLAINTIFF PHOENIX SOLUTIONS, INC., a California corporation,		DEFENDANT SONY ELECTRONICS, INC., INC., a Delaware corporation,
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 6,615,172 B1	9/2/03	PHOENIX SOLUTIONS, INC.,
2 6,633,846 B1	10/14/03	PHOENIX SOLUTIONS, INC.,
3 6,665,640 B1	12/16/03	PHOENIX SOLUTIONS, INC.,
4 7,050,977 B1	5/23/06	PHOENIX SOLUTIONS, INC.,
5		

In the above—entitled case, the following patent(s) have been included:

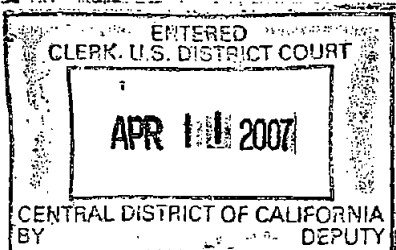
DATE INCLUDED	INCLUDED BY			
	<input checked="" type="checkbox"/> Amendment	<input checked="" type="checkbox"/> Answer	<input checked="" type="checkbox"/> Cross Bill	<input checked="" type="checkbox"/> Other Pleading
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK		
1				
2				
3				
4				
5				

In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT

CLERK SHERRI R. CARTER	(BY) DEPUTY CLERK JENNY M. PHAN	DATE APR - 9 2007
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Copy 1—Upon initiation of action, mail this copy to Commissioner Copy 3—Upon termination of action, mail this copy to Commissioner
 Copy 2—Upon filing document adding patent(s), mail this copy to Commissioner Copy 4—Case file copy



UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

SEND
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Case No. CV 06-7916 PA (FMOx) Date April 9, 2007

Title Phoenix Solutions, Inc. v. Sony Electronics Inc. ~~THIS CONSTITUTES NOTICE OF ENTRY AS REQUIRED BY FRCP, RULE 77(d).~~

Present: The Honorable PERCY ANDERSON, UNITED STATES DISTRICT JUDGE

C. Kevin Reddick

Not Reported

N/A

Deputy Clerk

Court Reporter

Tape No.

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

None

None

Proceedings: IN CHAMBERS — COURT ORDER

Before the Court are responses from plaintiff Phoenix Solutions, Inc. ("Phoenix") and defendant Sony Electronics Inc. ("Sony") to the Court's order to show cause why this case should not be transferred pursuant to 28 U.S.C. § 1404(a) for the convenience of the parties and witnesses.^{1/}

Phoenix is a California corporation with a principal place of business in Palo Alto, California. Phoenix's founder maintains a residence in Palo Alto but currently works and resides in Washington, DC. Sony, a Delaware corporation, is headquartered in San Diego, California. Intervoice is a Texas corporation with a principal place of business in Dallas, Texas.

Phoenix contends that Sony's interactive voice recognition customer service call system infringes four patents owned by Phoenix involving voice recognition processes. The allegedly infringing system was installed by Sony at its call center in Fort Myers, Florida, by Edify Corporation ("Edify"). Since selling the system to Sony, Edify, which was apparently based in Northern California, was acquired by Intervoice. The negotiations between Sony and Edify occurred in Florida between Sony executives based in Florida and an Edify sales representative based in Florida. Although Sony management is located in San Diego, all of the Sony employees who operate the system are located in Florida. Aside from callers located within the Central District who may call the Sony interactive voice recognition system, the only connections between the Central District and this dispute are that one potential non-party witness lives here and Phoenix's counsel is located here.

Analysis

Under 28 U.S.C Section 1404(a), a court may transfer an action "to any other district where it might have been brought" "[f]or the convenience of parties and witnesses, [and] in the interest of

^{1/} Third-Party defendant Intervoice, Inc. ("Intervoice") was served with the Third-Party Complaint on March 23, 2007. Intervoice appeared at the further scheduling conference on April 9, 2007, and agreed with Sony that transfer was appropriate because this dispute has little connection with the Central District and could be more conveniently pursued elsewhere.

UNITED STATES DISTRICT COURT
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justice." A court may transfer venue in response to a motion by either party in the case, or upon its own motion. See Muldoon v. Tropitone Furniture Co., 1 F.3d 964, 966 (9th Cir. 1993). However, "a transfer is inappropriate when it merely serves to shift inconveniences from one party to the other." Kahn v. Gen. Motors Corp., 889 F.2d 1078, 1083 (Fed. Cir. 1989).

Transfer under 28 U.S.C. §1404(a) is only available to districts in which the case "might have been brought" initially. Id. Thus, the "transferee court" must have subject matter jurisdiction, venue must be proper, and defendant(s) must be subject to personal jurisdiction. The § 1404 transfer analysis therefore has two steps: (1) Whether the district to which the moving party seeks to transfer meets the requirement of being one where the case "might have been brought"; and (2) if it does, would transfer serve the interest of the convenience of parties and witnesses, and the "interest of justice."

A. This Action Could Have Been Brought in the Northern District of California

The parties do not dispute that this action could have been brought in the Northern District of California. Phoenix's principal place of business is in Northern California. Additionally, Intervoice has a training office in the Northern District of California and the Northern District of California also has personal jurisdiction over Sony. Therefore, the Northern District of California is an appropriate forum for the action. See 28 U.S.C. § 1391(b).

B. The Interests of Convenience and Justice Are Served By Transfer

In analyzing the second prong of a transfer under § 1404, the Court may consider several factors to determine whether the convenience and interest of justice elements of § 1404(a) are met by the proposed transfer: (1) convenience to the parties and witnesses; (2) relative ease of access to evidence; (3) availability of compulsory process for attendance of unwilling witnesses; (4) plaintiff's choice of forum; and (5) administrative considerations. See Decker Coal Co. v Commonwealth Edison Co., 805 F.2d 834, 843 (9th Cir. 1986); E. & J. Gallo Winery v. F. & P. S.P.A., 899 F. Supp. 465 (E.D. Cal. 1994). The factors are each sub-categories of the three general factors listed in the text of section 1404(a) itself: the convenience of parties, the convenience of witnesses, and the interest of justice. The Court is to interpret these factors broadly, and to apply them to the particular facts of each individual case. See e.g., E. & J. Gallo Winery, 899 F. Supp. at 466. There are a large number of factors that courts have considered in weighing the propriety of a § 1404(a) transfer, not all of which are particularly relevant here. Rather than discussing all possible influences on the Court's decision, the Court will focus only on the factors that are of significance in this case.

1. Plaintiff's Choice of Forum

On a motion for transfer, the plaintiff's choice of forum is generally given "great weight" and the defendant "must make a strong showing of inconvenience" to upset that choice. Lou v. Belzberg, 834 F.2d 730, 739 (9th Cir. 1987); Decker Coal Co., 805 F.2d at 843. Plaintiff's choice is given less weight,

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however, where the chosen forum lacks any significant contact with the activities alleged in the complaint. According to the Ninth Circuit:

Plaintiff's choice of forum, then, is not the final word. In judging the weight to be given such a choice, as is the case with other types of actions, consideration must be given to the extent both of the defendant's business contacts with the chosen forum and of the plaintiff's contacts, including those relating to his cause of action. If the operative facts have not occurred within the forum of original selection and that forum has no particular interest in the parties or the subject matter, the plaintiff's choice is entitled only to minimal consideration.

Pac. Car & Foundry Co. v. Pence, 403 F.2d 949, 954 (9th Cir. 1968) (footnote omitted); see also Saleh v. Titan Corp., 361 F. Supp. 2d 1152, 1157 (S.D. Cal. 2005) ("[N]umerous courts have given less deference to the plaintiff's choice of forum where the action has little connection with the chosen forum.").

Phoenix argues that its choice of venue should be respected because its counsel has already invested substantial time becoming knowledgeable about the patents and technology at issue, and to transfer the action away from where its attorney's offices are located would pose a financial hardship. Importantly, Phoenix can point to no behavior by defendants that would justify a finding that "a substantial part of the events or omissions giving rise to the claim occurred" in this District. Indeed, there is no dispute that Sony's decisions concerning its purchase of the allegedly infringing system occurred in Florida. Nothing involved in this dispute occurred in this District.^{2/} Thus, although Phoenix chose this forum, the tenuous relationship between this forum and the events giving rise to its claim leads the Court to attach minimal weight to Phoenix's choice of forum. Rather, the Court finds that, because Sony's behavior was centralized in the Middle District of Florida, and most of Phoenix's witnesses either live or have a connection to the Northern District of California, this factor weighs in favor of transferring this case to either of those districts.

2. Convenience to the Parties

Although Phoenix argues that venue is more convenient in the Central District because its counsel is located here, it is not where Phoenix's employees and affiliated witnesses are located. Florida, Texas, and the Southern and Northern Districts of California all would be more convenient for the parties.

^{2/} The Court notes that Phoenix's counsel has argued in other cases that venue was appropriate solely because the plaintiff's headquarters were located in this District. Here, however, Phoenix's counsel has conveniently abandoned that argument.

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the Northern District of California, by developing specific local rules for patent cases, has demonstrated a facility with patent cases. Additionally, all of the parties have retained California counsel. Therefore, in view of the factors indicating that the Northern District of California provides the most convenient and efficient forum, the Court finds that the "interest of justice" is best served by a transfer there.

Conclusion

For the foregoing reasons, and having considered the relevant public and private factors, the Court concludes that transferring the case will better serve the interests of justice without substantially affecting the convenience of the parties. The Court concludes that any presumption in favor of this venue is substantially outweighed by the greater interests of convenience and justice that would be served by transferring this case. The fact that Phoenix retained counsel who lives in the Central District simply does not make the Central District a convenient venue within the meaning of § 1404(a). Transfer under § 1404(a) is therefore appropriate. The Court orders the Clerk to transfer case number CV 06-7916 to the United States District Court for the Northern District of California.

IT IS SO ORDERED.

Initials of Preparer _____

cc: